No. 101.

Brief of Ingersoll for Certain D...

FILED
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JAMES H. McKENNEY

Filed Nov. 4, 1897.

Supreme Court of the United States.

C. G. BLAKE, et al.,
Plaintiffs in Error,
vs.
C. M. McCLUNG, et al.,
Respondents.

No. 101.

BRIEF FOR RESPONDENTS CLARKE & REID, Trustees.

There is no error in the decree of the Supreme Court of Tennessee.

Plaintiffs' contention requires the maintenance of two propositions: (1) that Section 5 of the Foreign Corporations Act of Tennessee (1877, Ch. 31, p. 44) and the decree of the Supreme Court enforcing same denies to plaintiffs, as citizens of Ohio and Virginia, and of the United States, privileges and immunities, or due process of law, or equal protection of the laws, granted to citizens of the State of Tennessee; and (2) that the State of Tennessee has no power or authority by legislation and adjudication to prescribe and enforce such conditions of admission and residence to a foreign corporation, and so administer the affairs of such corporation in insolvent liquidation by its Courts as to prefer the claims of resident creditors to those of non-residents.

Neither proposition is tenable; and, therefore, plaintiffs' contention must fail.

I.

Neither the Act nor the decree thereunder denies to plaintiffs any privileges or immunities as citizens of any State, or of the United States, nor does it deprive them of property without due process of law, nor deny them equal protection of the laws, nor does said act or decree give any priority or preference to citizens of Tennessee:

1. The preference complained of is not to *citizens*, but to "creditors who may be residents of this State * * * * * * over all simple contract creditors who may be residents of any other country or countries."

The Constitution forbids the denial of privileges and immunities solely on the ground of citizenship. The Act gives preference solely on the ground of residence. Residence and citizenship are not identical or synonymous. A person residing in Tennessee may be a citizen of another State, or even an alien, and have the benefits of this preference, as was given in this case to W. J. Love, the largest preferred creditor, (Rec., p. 45), though a subject of Queen Victoria residing in Tennessee. And a citizen of Tennessee, residing in the District of Columbia would be postponed under this Act to any alien resident.

2. Plaintiffs have not shown their citizenship, but merely their residence (Rec. p. 20). The allegation by the Hull Coal and Coke Company, "that it is a corporation created and established under the laws of the State of Virginia" is not sufficient.

This Court will not declare a State Statute unconstitutional unless it appears beyond reasonable doubt

(1) That plaintiff has the right to invoke the judgment of the Court thereon, and

(2) That the Statute is necessarily repugnant to the Federal Constitution.

People vs. R. R. Co. 15 Wend., 113.

II.

It is not an arbitrary and unwarranted exercise of governmental power for a State to protect the rights and interests of its own citizens; and, in so doing by regular proceedure, to control and dispose of property actually within its territorial jurisdiction. Such legislation and judicial action accords with the settled principles of international law and governmental policy.

Gilchrist vs. Cannon, 1 Cold., 587;
Allen vs. Bain, 2 Head, 106;
Smith vs. Insurance Co., 6 Lea, 567; (3 Tenn. Chy., 508);
Tinkham vs. Borst, 31 Barb., 412;
National Trust Co. vs. Miller, 33 N. J. Eq., 159.

Equal protection of the law is not denied by an act which operates alike upon all persons and all property.

Walston vs. Nethid, 128 U. S., 582;
Wurts vs. Hoagland 114 U. S., 606.

It is competent for a State to prescribe terms and conditions of admission, residence and conduct for a foreign corporation.

N. & W. Railroad Co. vs. Penna., 136 U. S., 114;
Phila. Fire Ass'n. vs. N. Y., 119 U. S., 110;
Runyan vs. Coster, 14 Peters, 129;
Merrick vs. Van Santvoord, 34 N. Y., 129.

And all persons, resident or non-resident, citizen or alien, dealing with such foreign corporation must take notice of these conditions and are bound by

them; and, as a general rule, a non-resident may not maintain an action against a foreign corporation.

Smith v. Mut. Life Ins. Co., 14 Allen, 336.

This Foreign Corporations Act cannot be repugnant to the XIV. Amendment, because no privilege or immunity of national citizenship is denied.

Slaughterhouse Cases, 16 Wall., 36;
Duncan v. Missouri, 152 U. S., 377.

Because plaintiffs do not show that they have been denied any privilege or immunity as citizens of other States, and the Statute complained of is but a proper exercise of governmental function over a foreign corporation, and the particular section complained of a proper provision for insolvent administration by due process and upon ample notice, said act is not obnoxious to Article 4, Section 2, of the Constitution; and plaintiffs' writ of error should be dismissed.

HENRY H. INGERSOLL,
Counsel.

No. 101 C.

Brief of Seymour for D. C.

NOV 8 19
JAMES H. McKENN

Filed Nov. 8, 1897.

Supreme Court of the United States.

OCTOBER TERM, 1897.

C. G. Blake, Rogers, Brown & Co., and the Hull Coal & Coke Co., Plaintiffs in Error,
—*vs.*—
Calvin M. McClung, William P. Smith, William B. Keener, F. H. McClung, Jr., and Charles J. McClung, Jr., Partners as C. M. McClung & Co., et al.

No. 101.

(16,141.)

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

BRIEF FOR LONDON TRUST CO., L'D.

CHARLES SEYMOUR,
Counsel.

OGDEN BRO'S & CO., PRINTERS, KNOXVILLE, TENN.

—IN THE—

Supreme Court of the United States.

OCTOBER TERM, 1897.

C. G. Blake, Rogers, Brown & Co., and the Hull Coal & Coke Co., Plaintiffs in Error,

—*vs.*—

Calvin M. McClung, William P. Smith, William B. Keener, F. H. McClung, Jr., and Charles J. McClung, Jr., Partners as C. M. McClung & Co., et al.

No. 101.

BRIEF FOR LONDON TRUST CO., L'D.

STATEMENT.

The case is stated in agreement, page 1 of Record, and in brief for plaintiff in error, and in brief of J. W. Green, counsel for some of defendants in error.

POINTS.

The sole point presented for the London Trust Company, Limited, a judgment creditor, is that the Tennessee Statute Section 5, Chapter 31 of Acts of 1877, is to be treated as an entirety, as construed by the Supreme Court of Tennesse.

The question presented by this appeal is limited to whether the Section 5 of Chapter 31 of Acts of the Tennessee Legislature, as construed by the Supreme Court of Tennessee, is in conflict with the Constitution of the United States.

On the principle, *expressio unius est exclusio alterius*, no corporation created under the laws of any other commonwealth than Tennessee was allowed to transact its business or hold property in Tennessee unless it complied with the following requirements :

It must file copy of its Charter or Articles of Incorporation with Secretary of State of Tennessee;

It must record abstract of Charter in each county where business is done;

It must hold its property in Tennessee subject to the claims of residents of Tennessee, who must be first satisfied before any other creditors could subject such property to their claims.

Having complied with the above requirements, the corporation bought and held property and transacted its business.

It is now sought by the plaintiff in error--

To have a different construction placed upon the Statute from that given it by the highest Court of the State making it a law.

To have the Statute reconstrued to make a distinction between the creditors resident in other States of this Union and creditors resident in foreign countries.

The purpose of the Statute is evident.

As was argued in the Tennessee Courts on the hearings of this case, the Legislature of Tennessee intended to prevent a foreign corporation (whether American or alien, no distinction was made) from establishing itself in Tennessee, obtaining credit on visible assets and, by means of real or fabricated indebtedness to persons or corporations at a distance, going

into insolvency, and by the great amount of its debts at a distance to sweep away the assets on which among its neighbors in Tennessee it had obtained credit. For such purpose, a creditor in California or New York was as far away as a creditor in England or France.

The decision of the Supreme Court of Tennessee is in line with this idea. The use of the word residents in place of the word citizen shows it; the decree, Record page 64, shows it, and the State of Tennessee having passed this Act so construed by its Supreme Court, the validity of the Act must stand or fall by the construction given. Either Section 5 is valid as it stands and with the construction given, Record page 64 and page 69, paragraphs 3 and 4, or all preference must be set aside.

The rule that "Statutes that are constitutional in "part only will be upheld so far as they are not in con- "flict with the Constitution provided the allowed and "prohibited parts are *separable*," has no application here as the only section, the only paragraph, which is attacked as unconstitutional is as follows:

"Nevertheless creditors who may be residents of "this state shall have a priority in the distribution of "assets or subjection of the same or any part thereof to "the payments of debts over all simple contract creditors "being resident of any other country or countries."

The Supreme Court of Tennessee has construed the words "country or countries" to mean all the world outside of Tennessee.

In view of the repeated holdings that all corporations are foreign corporations outside of the State in which they were created, and of the caption of the Act "To declare the terms on which foreign corporations may carry on their business;" and the further definition of Section 1.

Corporations chartered under the laws of other

states or countries; and the first words of Section 2—"each corporation created or organized under or by "virtue of any government other than that of this state;" clearly show the intent of the Legislature, and support the construction given to Section 5 by the Tennessee Supreme Court. To separate and reclassify creditors would be legislation. It is respectfully insisted that Section 5 must stand or fall on the construction given to it by the Supreme Court of the State where the Legislature passed it. The law is at present in Tennessee what the Tennessee Court adjudicates it to be. It is upon the Tennessee law so construed and so in force that question is raised in this Court.

This Court has uniformly adopted the decisions of the State respectively in the construction of their Statutes.

Green vs. Lessee of Neal, 6 Peters, 291.

Shelby vs. Guy, 11th Wheaton, cited in Christy vs. Pridgeon, 4 Wallace, 196.

Marbury vs. Kentucky Land Co., U. S. Cir. Ct. Appeals, and case cited, 62 Fed. Rep., 335.

CHARLES SEYMOUR,

Counsel.